

**UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>IN RE:</b> <b>ROSA ARIAS</b>  <b>Debtor</b>  <b>THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE (CWALT 2006-31CB)</b> <b>Movant</b>  <b>v.</b> <b>ROSA ARIAS</b>  <b>Respondent</b>	: : : : : : : : : : :	<b>BK. No. 5:18-01055 RNO</b>  <b>Chapter No. 13</b>
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**OBJECTION OF THE BANK OF NEW YORK MELLON  
FKA THE BANK OF NEW YORK, AS TRUSTEE (CWALT 2006-31CB)  
TO CONFIRMATION OF THE DEBTOR'S CHAPTER 13 PLAN**

Movant, **THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE (CWALT 2006-31CB)** (hereinafter referred to as "Movant"), by its attorneys Phelan Hallinan Diamond & Jones, LLP hereby objects to confirmation of the Debtor's Chapter 13 Plan as follows:

1. Movant is **THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE (CWALT 2006-31CB)**.
2. Debtor, ROSA ARIAS, is the owner of the property located at 508 WINTERS AVENUE #510, WEST HAZLETON, PA 18202-3733.
3. Movant is in the process of drafting and filing a Proof of Claim. The approximate arrears are \$16,152.92.
4. Debtor's Plan fails to cure the delinquency pursuant to 11 U.S.C. §1322(b)(5).
5. Debtor's Plan does not provide for payment of arrears to Movant. Instead, the Debtor's Plan seeks to cramdown Movant's valid secured lien to the value of \$28,000.00. Movant does not agree to this value. A copy of the Debtor's Plan is attached hereto as Exhibit "A" and made a part hereof.
6. Movant objects to this treatment of its claim and the proposed valuation of the property as the subject property is Debtor's principal residence and Movant's claim is protected under the anti-modification clause of §1322(b)(2).
7. Further, Movant takes the position that the subject property value far exceeds that amount being claimed by the Debtor.
8. Movant objects to the Debtor's proposed Chapter 13 Plan as it provides no evidence to substantiate the value listed in the Plan. Strict proof is demanded at trial.
9. Movant requests the opportunity to conduct an appraisal of the property and have a valuation hearing scheduled, if needed.
10. Movant objects to the interest rate listed by the Debtor in the amount of 5.00%. This rate is less than the Note rate of 7.25% and does not follow the allowed interest rate set forth in In re Till.
11. Movant requests that the confirmation of the Chapter 13 Plan be denied in its entirety.

WHEREFORE, **THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE (CWALT 2006-31CB)** respectfully requests that this Honorable Court deny confirmation of the Debtor's Chapter 13 Plan.

Respectfully Submitted,

/s/ James A. Prostko, Esquire

James A. Prostko, Esq., Id. No.27221

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# **Exhibit “A”**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE:		CHAPTER 13
ROSA ARIAS		CASE NO. 5:18-bk-
		<input checked="" type="checkbox"/> ORIGINAL PLAN <input type="checkbox"/> AMENDED PLAN (Indicate 1 <sup>ST</sup> , 2 <sup>ND</sup> , 3 <sup>RD</sup> , etc) <input type="checkbox"/> Number of Motions to Avoid Liens <input type="checkbox"/> Number of Motions to Value Collateral

**CHAPTER 13 PLAN**

**NOTICES**

Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as “Not Included” or if both boxes are checked or if neither box is checked, the provision will be ineffective if set out later in the Plan.

1	The plan contains nonstandard provisions, set out in §9, which are not included in the standard plan as approved by the U.S. Bankruptcy Court for the Middle District of Pennsylvania.	*      Included	<input type="checkbox"/> Not Included
2	The plan contains a limit on the amount of a secured claim, set out in §2.E, which may result in a partial payment or no payment at all to the secured creditor.	*      Included	Not Included
3	The plan avoids a judicial lien or nonpossessory, nonpurchase-money security interest, set out in §2.G	<input type="checkbox"/> Included	*      Not Included

**YOUR RIGHTS WILL BE AFFECTED**

READ THIS PLAN CAREFULLY. If you oppose any provision of this plan, you must file a timely written objection. This plan may be confirmed and become binding on you without further notice or hearing unless a written objection is filed before the deadline stated on the Notice issued in connection with the filing of the Plan.

**1. PLAN FUNDING AND LENGTH OF PLAN.**

**A. Plan Payments From Future Income**

1. To date, the Debtor paid \$\_\_\_\_\_ (enter \$0 if no payments have been made to the Trustee to date). Debtor shall pay to the Trustee for the remaining term of the plan the following payments. If applicable, in addition to monthly plan payments, Debtor shall make conduit payments through the Trustee as set forth below. The total base plan is \$45,264.00, plus other payments and property stated in §1B below:

Start mm/yyyy	End mm/yyyy	Plan Payment	Estimated Conduit Payment	Total Monthly Payment	Total Payment Over Plan Tier
04/2018	03/2022	\$943.00	\$0.00	\$943.00	\$45,264.00
				Total Payments:	\$45,264.00

2. If the plan provides for conduit mortgage payments, and the mortgagee notifies the Trustee that a different payment is due, the Trustee shall notify the Debtor and any attorney for the Debtor, in writing, to adjust the conduit payments and the plan funding. Debtor must pay all post-petition mortgage payments that come due before the initiation of conduit mortgage payments.

3. Debtor shall ensure that any wage attachments are adjusted when necessary to conform to the terms of the plan.

4. CHECK ONE:     ☒ Debtor is at or under median income. *If this line is checked, the rest of §1.A.4 need not be completed or reproduced.*

☐ Debtor is over median income. Debtor calculates that a minimum of \$ 0.00 must be paid to allowed unsecured creditors in order to comply with the Means Test.

**B. Additional Plan Funding From Liquidation of Assets/Other**

1.     The Debtor estimates that the liquidation value of this estate is \$ 0.00 (Liquidation value is calculated as the value of all non-exempt assets after the deduction of valid liens and encumbrances and before the deduction of Trustee fees and priority claims.)

*Check one of the following two lines.*

X   No assets will be liquidated. *If this line is checked, the rest of §1.B need not be completed or reproduced.*

       Certain assets will be liquidated as follows:

2. In addition to the above specified plan payments, Debtor shall dedicate to the plan proceeds in the estimated amount of \$ \_\_\_\_\_ from the sale of property known and designated as \_\_\_\_\_. All sales shall be completed by \_\_\_\_\_. If the property does not sell by the date specified, then the disposition of the property shall be as follows:
3. Other payments from any source(s) (describe specifically) shall be paid to the Trustee as follows: \_\_\_\_\_.

## 2. SECURED CLAIMS.

### A. Pre-Confirmation Distributions. *Check one.*

  X   None. *If "None" is checked, the rest of §2.A need not be completed or reproduced.*

       Adequate protection and conduit payments in the following amounts will be paid by the Debtor to the Trustee. If the Trustee will disburse these payments for which a proof of claim has been filed as soon as practicable after receipt of said payments from the Debtor.

Name of Creditor	Last Four Digits of Account Number	Estimated Monthly Payment

1. The Trustee will not make a partial payment. If the Debtor makes a partial plan payment, or if it is not paid on time and the Trustee is unable to pay timely a payment due on a claim in this section, the Debtor's cure of this default must include any applicable late charges.
2. If a mortgagee files a notice pursuant to Fed. R. Bankr.P.3002.1(b), the change in the conduit payment to the Trustee will not require modification of this Plan.

### B. Mortgages (Including Claims Secured by Debtor's Principal Residence) and

**Other Direct Payments by Debtor. Check One.**

  X   None. If “None” is checked, the rest of §2.B need not be completed or reproduced.

       Payments will be made by the Debtor directly to the creditor according to the original contract terms, and without modification of those terms unless otherwise agreed to by the contracting parties. All liens survive the plan if not avoided or paid in full under the plan.

Name of Creditor	Description of Collateral	Last Four Digits of Account Number

**C. Arrears (Including, but not limited to, claims secured by Debtor’s principal residence). Check one.**

  X   None. If “None” is checked, the rest of §2.C need not be completed or reproduced.

       The Trustee shall distribute to each creditor set forth below the amount of arrearages in the allowed proof of claim. If post-petition arrears are not itemized in an allowed claim, they shall be paid in the amount stated below. Unless otherwise ordered, if relief from the automatic stay is granted as to any collateral listed in this section, all payments to the creditor as to that collateral shall cease, and the claim will no longer be provided for under §1322(b)(5) of the Bankruptcy Code.

Name of Creditor	Description of Collateral	Estimated Pre-Petition Arrears to be Cured	Estimated Post-Petition Arrears to be Cured	Estimated Total to be paid in plan

**D. Other secured claims (conduit payments and claims for which a §506 valuation is not applicable, etc.)**

       None. If “None” is checked, the rest of §2.D need not be completed or reproduced.

  X   The claims below are secured claims for which a § 506 valuation is not

applicable, and can include: (1) claims that were either (a) incurred within 910 days of the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the Debtor, or (b) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value; (2) conduit payments; or (3) secured claims not provided elsewhere.

1. The allowed secured claims listed below shall be paid in full and their liens retained until completion of payments under the plan.
2. In addition to payment of the allowed secured claim, present value interest pursuant to 11 U.S.C. §1325(a)(5)(B)(ii) will be paid at the rate and in the amount listed below, unless an objection is raised. If an objection is raised, then the court will determine the present value interest rate and amount at the confirmation hearing.
3. Unless otherwise ordered, if the claimant notifies the Trustee that the claim was paid, payments on the claim shall cease.

<b>Name of Creditor</b>	<b>Description of Collateral</b>	<b>Principal Balance of Claim</b>	<b>Interest Rate</b>	<b>Total to be Paid in Plan</b>
<b>Greater Hazleton Joint Sewer Auth.</b>	<b>508-510 Winters Ave., West Hazleton, PA 18202</b>	<b>\$672.00</b>	<b>None</b>	<b>\$672.00</b>
<b>Hazleton City Authority</b>	<b>508-510 Winters Ave., West Hazleton, PA 18202</b>	<b>\$1,784.47</b>	<b>None</b>	<b>\$1,784.47</b>
<b>West Hazleton Borough</b>	<b>508-510 Winters Ave., West Hazleton, PA 18202</b>	<b>\$767.00</b>	<b>None</b>	<b>\$767.00</b>
<b>West Hazleton Garbage Disposal Bill</b>	<b>508-510 Winters Ave., West Hazleton, PA 18202</b>	<b>\$1,339.65</b>	<b>None</b>	<b>\$1,339.65</b>

**E. Secured claims for which §506 valuation is applicable.** Check one.



\_\_\_\_ None. If "None" is checked, the rest of §2.E need not be completed or reproduced.

  X   Claims listed in the subsection are debts secured by property not described in §2.D of this plan. These claims will be paid in the plan according to modified terms, and liens retained until entry of discharge. The excess of the creditor's claim will be treated as an unsecured claim. Any claim listed as "\$0.00" or "NO VALUE" in the "Modified Principal Balance" column below will be treated as an unsecured claim. The liens will be avoided or limited through the plan or Debtor will file an adversary action (select method in last column). To the extent not already determined, the amount, extend or validity of the allowed secured claim for each claim listed below will be determined by the court at the confirmation hearing. Unless otherwise ordered, if the claimant notifies the Trustee that the claim was paid, payments on the claim shall cease.

Name of Creditor	Description of Collateral	Value of Collateral (Modified Principal)	Interest Rate	Total Payment	Plan or Adversary Action
Bayview Financial Loan	508-510 Winters Ave., West Hazleton, PA 18202	\$28,000.00	5% \$2,951.00	\$30,951.00	Plan

**F. Surrender of Collateral.** Check one.

  X   None. If "None" is checked, the rest of §2.F need not be completed or reproduced.

\_\_\_\_ The Debtor elects to surrender to each creditor listed below the collateral that secures the creditor's claim. The Debtor requests that upon confirmation of this plan the stay under 11 U.S.C. §362(a) be terminated as to the collateral only and that the stay under §1301 be terminated in all respects. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 4 below.

Name of Creditor	Description of Collateral to be Surrendered

**G. Lien Avoidance.** Do not use for mortgages or for statutory liens, such as tax liens.  
Check one.

X None. If "None" is checked, the rest of §2.G need not be completed or reproduced.

\_\_\_\_\_ The Debtor moves to avoid the following judicial and/or nonpossessory, non-purchase money liens of the following creditors pursuant to §522(f) (this § should not be used for statutory or consensual liens such as mortgages).

The name of the holder of lien.		
A description of the lien. For a judicial lien, include court and docket number.		
A description of the liened property.		
The value of the liened property		
The sum of senior liens		
The value of any exemption claimed.		
The amount of the lien.		
The amount of lien voided.		

### 3. PRIORITY CLAIMS.

#### A. Administrative Claims

1. Trustee's Fees. Percentage fees payable to the Trustee will be paid at the rate fixed by the United States Trustee.
2. Attorney's Fees. Complete only one of the following options:
  - a. In addition to the retainer of \$1,000.00 already paid by the Debtor, the amount of \$3,000.00 in the plan. This represents the unpaid balance of the presumptively reasonable fee specified in L.B.R. 2016-2( c); or
  - b. \$\_\_\_\_\_ per hour, with the hourly rate to be adjusted in accordance with the terms of the written fee agreement between the Debtor and

the attorney. Payment of such lodestar compensation shall require a separate fee application with the compensation approved by the Court pursuant to L.B.R. 2016-2(b).

3. Other. Other administrative claims not included in §§ 3.A.1 or 3.A.2 above. Check one of the following two lines.

X None. If "None" is checked, the rest of § 3.A.3 need not be completed or reproduced.

\_\_\_\_\_ The following administrative claims will be paid in full.

Name of Creditor	Estimated Total Payment

- B. **Priority Claims (including, but not limited to, Domestic Support Obligations other than those treated in § 3.C below).** Check one of the following two lines.

\_\_\_\_\_ None. If "None" is checked, the rest of § 3.B need not be completed or reproduced.

X Allowed unsecured claims, including domestic support obligations, entitled to priority under § 1322(a) will be paid in full unless modified under §9.

Name of Creditor	Estimated Total Payment

- C. **Domestic Support Obligations assigned to or owed to a governmental unit under 11 U.S.C. §506 (a)(1)(B).** Check one of the following two lines.

X None. If "None" is checked, the rest of § 3.C need not be completed or reproduced.

\_\_\_\_\_ The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim. This plan provision requires that payments in § 1.A. be for a term of 60 months (see 11 U.S.C. § 1322 (a)(4)).

Name of Creditor	Estimated Total Payment

**4. UNSECURED CLAIMS**

**A. Claims of Unsecured Nonpriority Creditors Specially Classified.** Check one of the following two lines.

  X   None. If "None" is checked, the rest of § 4.A need not be completed or reproduced.

       To the extent that funds are available, the allowed amount of the following unsecured claims, such as co-signed unsecured debts, will be paid before other, unclassified, unsecured claims. The claim shall be paid interest at the rate stated below. If no rate is stated, the interest rate set forth in the proof of claim shall apply.

Name of Creditor	Reason for Special Classification	Estimated Amount of Claim	Interest Rate	Estimated Total Payment

**B. Remaining allowed unsecured claims will receive a pro-rata distribution of funds remaining after payment of other classes.**

**5. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.** Check one of the following two lines.

  X   None. If "None" is checked, the rest of § 5 need not be completed or reproduced.

       The following contracts and leases are assumed (and arrears in the allowed claim to be cured in the plan) or rejected:

Name of Other Party	Description of Contract or Lease	Monthly Payment	Interest Rate	Estimated Arrears	Total Plan Payment	Assume or Reject

**6. VESTING OF PROPERTY OF THE ESTATE.**

**Property of the estate will vest in the Debtor upon**

Check the applicable line:

- ☐ plan confirmation.  
☐ entry of discharge.  
☒ closing of case.

**7. DISCHARGE: (Check one)**

- (X) The debtor will seek a discharge pursuant to § 1328(a).  
( ) The debtor is not eligible for a discharge because the debtor has previously received a discharge described in § 1328(f).

**8. ORDER OF DISTRIBUTION:**

If a pre-petition creditor files a secured, priority or specially classified claim after the bar date, the Trustee will treat the claim as allowed, subject to an objection by the Debtor.

Payments from the plan will be made by the Trustee in the following order:

Level 1:	<u>Adequate Protection Payments</u>
Level 2:	<u>Debtor's Attorney Fees</u>
Level 3:	<u>Domestic Support Obligations</u>
Level 4:	<u>Secured Claims, Pro Rata</u>
Level 5:	<u>Priority Claims, pro rata</u>
Level 6:	<u>Specially classified unsecured claims</u>
Level 7:	<u>Timely filed general unsecured claims</u>
Level 8:	<u>Untimely filed general unsecured claims to which Debtor has not objected</u>

If the above Levels are filled in, the rest of § 8 need not be completed or reproduced. If the above Levels are not filled-in, then the order of distribution of plan payments will be determined by the Trustee using the following as a guide:

Level 1:	Adequate protection payments.
Level 2:	Debtor's attorney's fees.
Level 3:	Domestic Support Obligations.
Level 4:	Priority claims, pro rata.
Level 5:	Secured claims, pro rata.
Level 6:	Specially classified unsecured claims.
Level 7:	Timely filed general unsecured claims.
Level 8:	Untimely filed general unsecured claims to which the Debtor has not objected.

## 9. NONSTANDARD PLAN PROVISIONS

Include the additional provisions below or on an attachment. Any nonstandard provision placed elsewhere in the plan is void. (NOTE: The plan and any attachment must be filed as one document, not as a plan and exhibit.)

The following is a summary of the creditors and amounts to be paid by the Trustee pursuant to this Plan:

Chapter 13 Trustee	\$ 3,395.00(est.)
Tullio DeLuca, Esq.,	\$ 3,000.00
Bayview Financial Loan	\$ 30,951.00 (allowed secured claim)
Greater Hazleton Joint Sewer Auth.	\$ 672.00 (allowed secured claim)
Hazleton City Auth.	\$ 1,784.74 (allowed secured claim)
West Hazleton Borough	\$ 767.00 (allowed secured claim)
West Hazleton Garbage Disposal Bill	\$ 1,339.65 (allowed secured claim)
Unsecured Creditors-Pro-rata basis	\$ 3,354.61
Total:	\$ 45,264.00

**\*\* Debtor shall be responsible to pay real estate taxes by end of each current tax year period and maintain insurance on the real property during the term of the Plan**

The Chapter 13 Trustee payment shall be made to the following address:

CHARLES J. DEHART, III, ESQ.  
P.O. BOX 7005  
LANCASTER, PA 17604

Dated: March 16, 2018

/s/Tullio DeLuca  
Attorney for Debtor

/s/Rosa Arias  
Debtor

By filing this document, the debtor, if not represented by an attorney, or the Attorney for Debtor also certifies that this plan contains no nonstandard provisions other than those set out in §9.